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No. 91-1723

SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

THOMAS G. CLINES

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner was properly convicted for failing to disclose his capital and investment accounts, held by a Swiss business entity that provides financial services, as financial accounts held by a financial institution?

2. Whether Independent Counsel Walsh had authority to prosecute tax violations arising from petitioner's failure to report the gross receipts resulting in part from sales of arms to Iran and the Contras and his failure to disclose the existence of foreign financial accounts in a financial institution in which his share of the profits was kept?

3. Whether venue was proper for prosecution of income tax reporting violations and failures to file foreign financial account forms in the district in which the returns were prepared and in which the account forms could have been filed?

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 958 F.2d 578.

JURISDICTION

The judgment of the court of appeals was entered on February 27, 1992. The petition for a writ of certiorari was filed on April 27, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the District of Maryland, petitioner was convicted of willfully underreporting gross receipts

and falsely stating that he did not have an interest in a financial account in a foreign country on his federal individual income tax returns for 1985 and 1986, in violation of 26 U.S.C. 7206(1), and of knowingly failing to file reports for 1985 and 1986 disclosing to the Commissioner of Internal Revenue an interest in a foreign financial account, in violation of 31 U.S.C. 5314, 5322 and 31 C.F.R. §§ 103.24, 103.26. The district court sentenced petitioner to a term of 16 months of imprisonment and a fine of $40,000.00. The court of appeals affirmed petitioners' conviction. Pet. App. 1a-11a.

1. The evidence at trial established that Thomas Clines hid from the United States Government both the amount of money he made from his role in the Iran/Contra affair in 1985 and 1986 and the fact that he kept large sums of money abroad in two secret accounts, a capital account under the name of T.C. that he maintained with a firm called Compagnie de Services Fiduciaires (CSF), in Geneva, Switzerland, in 1985, and an investment acount in the name of C. Tea that he maintained with that same institution in 1986.

Retired Air Force Major General Richard V. Secord was recruited by Lieutenant Colonel Oliver North, of the National Security Council staff, to supervise a covert operation to provide arms and ammunition to the Nicaraguan Contras. That operation became known as the Enterprise. To carry out the plan, Secord enlisted businessman Albert Hakim, who organized the financial infrastructure of the operation, and petitioner, who assumed responsibility for locating and purchasing weapons abroad and shipping them to Central America. Tr. 160, 162; C.A.J.A. 434, 436. The initial agreement among Secord, Hakim and

petitioner was that petitioner would receive 20% of the profits from each arms shipment, plus expenses. Tr. 161, 167; C.A.J.A. 435, 439.

Hakim turned to CSF to provide financial services to the Enterprise. CSF provided its individual and corporate clients a broad range of financial and investment management services that included assisting clients in the formation of corporations, providing corporate bookkeeping and accounting services, and investing funds received from clients in bonds, securities, and commodities. At Hakim's request, CSF and its chief officer, Willard Zucker, formed 11 shell corporations chartered in Panama, Liberia, or Switzerland for the purpose of collecting money and financing the procurement of weapons. Those corporations included Energy Resources International S.A. and Lake Resources Inc., the principal entities used to receive funds for the project.

During 1985, petitioner's profits from each arms shipment went into the "T.C. capital account" managed by CSF. A total of $373,134 flowed through this account. C.A.J.A. 218, 254. By simply contacting CSF, petitioner could direct the disposition of these funds in any way he wanted: he could (and did) have some of this money wired from his account in Switzerland to the United States; he could (and did) arrange to withdraw some of it in cash; he could (and did) have some of it transferred to a third party for petitioner's benefit. At the same time, petitioner had the option of leaving the money in the T.C. capital account with CSF; CSF kept a running ledger of his balances (including both his surpluses and the debits occasioned when he drew down anticipated profits). Both Secord and Zucker testified at trial that, after alloca-

tion, petitioner's actual control of funds maintained in the T.C. account at CSF was complete.

In 1986, the sale of arms to the Contras continued. At the same time, the sale by the United States Government of arms to Iran generated a new source of funding for the covert Contra arms sales: receipts from the Iran arms sale were used to pay both for the actual cost of weapons provided to the Contras and for the profits from the arms sales reaped by petitioner, Secord and Hakim. In 1986, petitioner's share of the profits increased to 30%. Tr. 174-75, C.A.J.A. 443-44.

In 1986, petitioner opened an investment account with CSF, using the assumed name "C. Tea." Tr. 366, 368, 372; C.A.J.A. 506, 508, 512; C.A.J.A. 208-12. Funds from petitioner's share of the 1986 profits were deposited in the C. Tea account, and were then invested in bonds, securities and foreign currency. C.A.J.A. 219-248. Petitioner earned income of $17,135.10 from funds invested in the C. Tea account during 1986. C.A.J.A. 255.

Beginning in 1982, petitioner used as his accountant Melvyn Leshinsky, who had his offices in Bethesda, Maryland. Tr. 682-83, 685-86; C.A.J.A. 587-88, 590-91. Leshinsky prepared petitioner's 1985 and 1986 federal income tax returns in his Bethesda, Maryland office. Tr. 686, C.A.J.A. 591; Tr. 745, C.A.J.A. 649. Petitioner and his bookkeeper repeatedly met with and corresponded with Leshinsky in Maryland. Tr. 735, 743, 820-21; C.A.J.A. 340, 640, 644, 719-20.

Petitioner's gross receipts in 1985 from Enterprise and non-Enterprise sources were *at least* $468,431.08. He was obligated to list that figure on line 1a of

Schedule C of his 1985 income tax returns. The figure he actually reported, however, was $265,000, C.A.J.A. 123, for a shortfall of *at least* $203,431.08, C.A.J.A. 259. $265,000 represented exactly the amount of money that petitioner brought into the United States from abroad. Gov't C.A. Br. 8. The money that petitioner left abroad was not reported.

In order to conceal the existence of his capital account and thereby conceal his income left abroad, petitioner falsely answered "no" to the question on his 1985 tax return asking whether he had an interest in or authority over a foreign account. In preparing the return, Leshinsky specifically asked petitioner whether he had an account in any foreign country; petitioner informed Leshinsky that he did not have such an account. Tr. 703-04, 815-16; C.A.J.A. 608-09, 714-15.

Petitioner had prior knowledge of the reporting requirements. In 1983, in reviewing petitioner's financial records in the context of an investigation of which petitioner was the subject, Leshinsky found that petitioner had controlled a bank account in Bermuda in 1981, and that, although the due date was past, no report for that account had been filed. Leshinsky then prepared a Form 90-22.1 for that account, Tr. 714-16, C.A.J.A. 619-21, which petitioner filed, C.A.J.A. 187-88; C.A.S.A. 1-4; Tr. 705-708, C.A.J.A. 610-12. The evidence thus showed that petitioner knew that if he had answered truthfully Leshinsky's question to him as to whether he had a foreign account, Leshinsky would have prepared petitioner's Form 90-22.1.

Leshinsky also prepared petitioner's 1986 income tax return. On that return, petitioner listed his gross receipts as $402,513. C.A.J.A. 163. The Government proved at trial that petitioner's gross receipts in 1986

were *at least* $459,522.45, or $57,009.45 more than petitioner reported. C.A.J.A. 253, 255, 259.[1] Thus, the 1986 income tax return, like the 1985 income tax return, falsely underreported petitioner's gross receipts.

The 1986 income tax return also contained a false statement with respect to the question whether petitioner had a foreign account. As he had with respect to the 1985 income tax return, Leshinsky asked petitioner whether he had a foreign account, and petitioner answered in the negative. Tr. 750-52, 815-16; C.A.J.A. 651-53, 714-15. Petitioner never informed Leshinsky of the existence of the C. Tea investment account, which petitioner had maintained during 1986 with CSF in Geneva. Tr. 752-54, 796; C.A.J.A. 653-55, 695. Moreover, while petitioner informed Leshinsky of the interest that he earned on his United States accounts, none of the $17,135.10 that petitioner earned in income from his C. Tea account was reported on his 1986 income tax return. Tr. 754, C.A.J.A. 655.

Petitioner testified at trial. He acknowledged receiving every dollar that the Government charged were his gross receipts in 1985. Tr. 1295-96, C.A.J.A.

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[1] As in the case of 1985, the Government's computation of Clines's true gross receipts for 1986 was extremely conservative. Clines also received a total of $70,000 in other payments from the Enterprise in 1986. C.A.J.A. 253. But since the underlying documents did not clearly establish that these additional funds were profits, they were not included in the Government's computation of the extent of Clines's underreporting. In addition, in 1986 Clines's bank accounts in the United States received by wire transfer $160,000 from unknown foreign sources. C.A.J.A. 258. That money was also not included in the Government's calculation of petitioner's true gross receipts in 1986.

878-79. He testified that the underreporting on his 1985 income tax returns arose from his inability to understand the difference between net and gross income. Tr. 1262, C.A.J.A. 845. He referred to his 1985 capital account as his "profit account," Tr. 1220, C.A.J.A. 803, but said he did not believe it was reportable, Tr. 1302, C.A.J.A. 885. He nonetheless acknowledged that he had control over the funds in his capital account once they had been allocated to him and that the statement of gross receipts on his original 1985 income tax return "is not correct." Tr. 1305, C.A.J.A. 888. He also admitted that the answer on Schedule B of his 1986 income tax return stating that he did not have a foreign account "is incorrect." Tr. 1306, C.A.J.A. 889.

Petitioner called his former attorney, who testified that, after petitioner became a focus of the investigation in the Iran/Contra matter, petitioner filed an amended 1985 tax return reporting additional gross receipts. In explaining his underreporting of his gross receipts, petitioner told his attorney that he had not understood the difference between net and gross income. Tr. 1147-48.

2. The court of appeals affirmed. Pet. App. 1a-11a. In the court of appeals, petitioner raised two claims. First, he contended that he could only be prosecuted for failure to file reports of foreign financial accounts in the jurisdiction where the Treasury Department had a post office box to which the form should have been forwarded.[2] The court of appeals found that venue was proper in Maryland because of

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[2] For the 1985 form, the Treasury post office box was in Memphis, Tennessee. The Treasury post office box for the 1986 form was in Detroit, Michigan. Pet. App. 10a n.2.

petitioner's contracts with the state—in particular, his accountant worked there and prepared petitioner's 1985 and 1986 tax returns there—and because prosecution in Maryland did not impose improper hardships on petitioner.

Second, petitioner challenged his conviction for failing to file a report of a foreign financial account maintained in 1985 and his conviction for making false statements on his 1985 income tax returns on the ground that he had no obligation to report the TC capital account. Rejecting that claim, the court of appeals found that that account was covered by the reporting requirement. Pet. App. 7a-9a.

In the court of appeals, petitioner did not contest his conviction for making false statements on his 1986 income tax return.

ARGUMENT

Virtually all of petitioner's arguments were not raised below and are thus not properly before this Court. None of his arguments warrants review by this Court, and all are at odds with well-established substantive law.

1. Petitioner first contends that the statutory and regulatory reporting requirements concerning the disclosure of financial accounts maintained at foreign financial institutions were impermissibly vague, Pet. 13-17, and that, because the trial court refused to give petitioner's proffered instruction concerning financial institutions, the jury could not have properly concluded that he acted willfully, Pet. 17-19.

a. Petitioner apparently concedes that CSF was a "financial institution" within the meaning of the relevant form, regulation and statute. Similarly, he

apparently concedes that the T.C. capital account (used during 1985) and the C. Tea investment account (used during 1986) were financial accounts within the meaning of the relevant form, regulation and statute. Pet. 16. Moreover, he does not point to any ambiguity in the relevant definitions that the form, regulation and statute provide. Petitioner's argument appears to be that the terms "financial account" and "financial institution," as they are used and defined in the relevant form, regulation and statute, are inconsistent with the way in which a lay person who did not consult the relevant form, regulation and statute would define those terms, and that, as a result of that purported inconsistency, the tax return and the reporting form are impermissibly vague. See, *e.g.*, Pet. 14-15.

Initially, further review is unwarranted because petitioner's vagueness claim was neither raised in nor passed on by either court below. In the court of appeals, he mounted no challenge of any kind bearing on the 1986 investment account, explicitly conceding that that account was reportable. See, *e.g.*, Pet. C.A. Reply Br. 3 ("Mr. Clines concedes that the 1986 'C. Tea' account fell within the reach of the reporting requirement.") With respect to the 1985 account, he claimed that the T.C. account was not a reportable financial account at a financial institution, as those terms are defined in the relevant form, regulation and statute. He did not claim that the definitions of those terms were void for vagueness. Nor did he claim in the trial court that those terms were void for vagueness. Accordingly, petitioner ought not be permitted to raise his vagueness challenge for the first time before this Court. *Yee* v. *City of Escondido*, 112 S. Ct. 1522, 1531 (1992). *Delta Air Lines* v. *August*, 450 U.S.

346, 362 (1981); *United States* v. *Mendenhall*, 446 U.S. 544, 551-52 n.5 (1980); *Youakim* v. *Miller*, 425 U.S. 231, 234 (1976).

In any event, petitioner's vagueness argument is mistaken. First, as that portion of the court of appeals' decision which held that CSF was a financial institution and that petitioner maintained an account there indicates, Pet. 7a-8a, the definitional language of the relevant statute 31 U.S.C. 5312(a), and regulation, 31 C.F.R. § 103.11(e), is very specific.[3] Petitioner does not claim that this definitional language is ambiguous or otherwise lacking in clarity.

Second, this Court has held that, "Objections to vagueness under the Due Process Clause rest on the

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[3] Petitioner sets out the the statute himself. Pet. 6-8. The relevant portion of the statute has 21 subsections delineating entities and individuals that qualify as financial institutions, as well as activities, whether engaged in by entities or individuals, that bring them within the statute's coverage. Petitioner also notes that the definitions in the statute and in the regulation are much the same. Pet. 10. See also Gov't. C.A. Br. Add. vi-xi. Each term within the statute has either a common-sense meaning or refers to the definitional section of other statutes; the regulatory language adds more detail. Petitioner does not explain which definitions were unconstitutionally vague, nor does he challenge the holding of the court of appeals that the account was held by a financial institution within the meaning of at least 4 of the statutory and regulatory definitions. Pet. App. 7a-8a.

It should be added that petitioner mischaracterizes the court of appeals' decision. Petitioner indicates that the court of appeals found that Energy Resources was a financial institution. Pet. 16. In accordance with the Government's theory of the case, however, the court of appeals found that the financial institution was CSF, and it did not address the question whether Energy Resources was itself also a financial institution. Pet. App. 7a-8a.

lack of notice, and hence may be overcome in any specific case where reasonable persons would know their conduct is at risk." *Maynard* v. *Cartwright*, 486 U.S. 356, 361 (1988). See also *United States* v. *Ragen*, 314 U.S. 513, 524 (1942) ("A mind intent upon willful evasion is inconsistent with surprised innocence.") That standard is easily satisfied here. Petitioner, an international businessman, had experience with the foreign financial account reporting requirement, having filed such a form for 1981. Tr. 705-08, C.A.J.A. 610-12.[4] Petitioner did not disclose to his accountant—and did not pay taxes on—the money that he was able to keep abroad by using the T.C. capital account and the C. Tea investment account. Gov't C.A. Br. 10. Nor did he disclose to the accountant the investment income that he had earned from the C. Tea investment account. Gov't C.A. Br. 20-21. The evidence that petitioner knew his behavior was at risk was overwhelming.

b. Petitioner maintains that the jury could not have properly determined that he acted willfully, since the trial judge did not give the jury the instruction that petitioner requested defining "financial institution." Pet. 17-19. Petitioner's claim seems to be based on the trial court's refusal to give the following requested instruction:

> For purposes of this case, financial institutions include banks, brokers, or dealers in securities, currency dealers, and licensed transmitters of funds. I specifically instruct you that during the

[4] Petitioner argues that his filing of the form in 1983 suggests that he would have filed the relevant forms in 1985 and 1986 if he had believed he was obligated to file them. Pet. 20. Of course, the jury's verdict demonstrates that it rejected that conclusion.

> year 1985 neither Energy Resources nor Lake Resources was a financial institution within the meaning of the regulations.

Letter from Paula Junghans, Esq. to the Honorable Norman Ramsey, September 17, 1990, at 2.

The trial court instructed the jury that, with respect to all the crimes with which petitioner was charged, it had to determine that he acted willfully in order to convict him. Tr. 1533, 1537-41, 1543, 1545; C.A.J.A. 1104, 1108-12, 1114, 1116. Petitioner does not now maintain that the willfulness instruction as given was wrong. Moreover, the jury was instructed that:

> The government must prove that the defendant had either, one, a financial interest in a foreign financial account, or, two, signature or other authority over a foreign financial account. The government need not prove both.
>
> A financial account means an account maintained with a financial institution or other person who accepts deposits, exchanges or transmits funds.

Tr. 1544, C.A.J.A. 1115. Petitioner fails to explain how that instruction meaningfully differs from the one he sought.

Finally, petitioner was not barred from arguing to the jury about the meaning of the term "financial institution," as the full colloquy, from which his petition quotes an excerpt, Pet. 19, reveals:

> Ms. Junghans: . . . . I think you have to tell the jury what a financial institution is and that is defined in the regulations as a bank, a casino.
>
> The Court: I'm not going to throw it into the charge. You can get the 4th Circuit to direct me to do it.

> Ms. Junghans: It is on the form, I can look to the form that is in evidence.
>
> The Court: The form is in evidence. Read any document you want to that is in evidence . . . .

Tr. 1451, C.A.J.A. 1022. See also Tr. 1547, C.A.J.A. 1118.

Petitioner's willfulness claim is thus not supported by the only decision of this Court that he invokes, *Cheek* v. *United States*, 111 S. Ct. 604 (1991). There, the trial court instructed the jury "to disregard evidence of Cheek's understanding that, within the meaning of the tax laws, he was not a person required to file a return or to pay income taxes and that wages are not taxable income . . . ." 111 S. Ct. at 611. The trial court did not instruct the jury to disregard evidence of lack of willfulness. The jury was, in fact, fully instructed with respect to petitioner's defenses and permitted to consider them.

2. Petitioner's second question—whether Independent Counsel had authority to prosecute tax violations and currency reporting failures—was neither presented to nor passed upon by the court of appeals. It is therefore not properly before this Court. *Yee* v. *City of Escondido*, 112 S. Ct. at 1531; *Delta Air Lines* v. *August*, 450 U.S. at 362.

In any event, petitioner's claim is mistaken. Independent Counsel's authority to prosecute such violations was properly decided by the district court. That ruling fully comports with the only other decision in which the issue was raised. In *United States* v. *Secord*, 725 F. Supp. 563 (D.D.C. 1989), the trial court held that Independent Counsel had authority to prosecute perjuries before Congress because the "alleged perjury before Congress[] 'arose from' and was 'related to'

the subject matter of the Independent Counsel's jurisdiction . . . ." *Id.* at 565. In this case, the trial court followed the same logic, holding that, "crimes involving the attempt to hide arms sale profits meet the standard of a 'violation of *any* federal criminal law . . . *relating in any way to*' the sale of arms to Iran and the diversion of funds to the Contras. These crimes also fall into the category of 'a violation of *any* federal criminal law . . . *arising out of* such events.' " *United States* v. *Clines*, No. R-90-0064, slip op. at 3 (D. Md. Aug. 23, 1990) (emphasis in original).

Both rulings are based on a common-sense reading of the order appointing Lawrence E. Walsh Independent Counsel by the United States Court of Appeals for the District of Columbia Circuit Division for the Purpose of Appointing Independent Counsels, which provides for the "maximum" investigative jurisdiction allowed under 28 U.S.C. 594. C.A.J.A. 39-41. The order specifies 5 paragraphs of principal events that constitute the basis for the investigation—including direct or indirect sales of arms to Iran or *any* intermediary acting for Iran, the financing of any part of such transactions, and the "provision or coordination of support" for the Contras. Independent Counsel's investigative jurisdiction extends to any crimes "connected with or arising out of that investigation" and its prosecutorial jurisdiction extends to "any person[] . . . who [is] reasonably believed to have committed a violation of any federal criminal law . . . arising out of such events . . . ." Failing to report the gross receipts from the sale of arms to the Contras and failing to report the account in which his share of the profits from those sales were kept plainly "arise from" or "relat[e] in any way to" the princi-

pal events to be investigated.[5] *Cf. Shaw* v. *Delta Air Lines*, 463 U.S. 85, 96-99 (1983) (unless good reason exists to believe Congress intended otherwise, the phrase "relates to" must be construed in its normal, broad sense).

3. Petitioner claims that venue was improperly laid in the District of Maryland.[6] That claim is

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[5] Petitioner also suggests that Independent Counsel's prosecution of him was inconsistent with established Department of Justice policies. Pet. 23. This is incorrect. First, petitioner did not file an amended tax return for 1985 until *after* Congressional investigators began inquiring about his arms sale profits. Indeed, the evidence at trial showed that, in an attempt to gain immunity from Congress, petitioner submitted a false affidavit in which he claimed—untruthfully—that *all* of his arms sale profits had been properly reported on his tax returns. Even at that point, petitioner still filed a false 1986 tax return, made no disclosure of his foreign financial accounts, and, even when he ultimately amended his 1985 tax return, petitioner paid no additional taxes, instead offering the completely unsubstantiated claim that all of the unreported receipts had been used to pay expenses. Thus, under no stretch of the imagination would petitioner's belated amendment of his 1985 return have immunized him from prosecution under Department of Justice policy. See U.S. Department of Justice, *Criminal Tax Manual*, § 4.01. Petitioner's reference to misdemeanor pleas is also wrong. Department of Justice policy expressly disapproves of misdemeanor dispositions in tax cases except in extremely unusual circumstances not applicable here. *Id.* at § 16.03.

[6] Since his venue challenge in the court of appeals was limited to the counts involving failure to file reports of foreign financial accounts, his challenge to venue is so limited in this Court as well. *Yee*, 112 S. Ct. at 1531. It is clear, however, that venue was proper on the other counts since venue in prosecutions for making false statements on income tax returns lies where the returns were prepared. See, *e.g.*, *United States* v. *Rooney*, 866 F.2d 28, 30-32 (2d Cir. 1989);

mistaken. The reporting form specifically provides that the form may be filed with "any local office of the Internal Revenue Service," Form 90-22.1,[7] and the law is clear that prosecution in the District of Maryland is appropriate because there is a local IRS office in Maryland at which petitioner could have filed the form. As the court of appeals held:

> The situs of a crime consisting of a failure to act is the place fixed for performance of the act. *Johnston* v. *United States*, 351 U.S. 215 (1956). The crime of failure to file returns is committed in the district or districts where the taxpayer is required to file the returns. *United States* v. *Garman*, 748 F.2d 218 (4th Cir. 1984), *cert. denied*, 470 U.S. 1005 (1985).

Pet. App. 9a-10a.[8] Prosecution in Maryland was also consistent with petitioner's Sixth Amendment rights.

United States v. *Slutsky*, 487 F.2d 832, 839 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974); *United States* v. *Marchant*, 774 F.2d 888, 891 (8th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986).

[7] Instruction C of the form, Report of Foreign Bank and Financial Accounts, 90-22.1, for 1985 reads:

> C. When and where to File—This report shall be filed on or before June 30 each calendar year with the Department of the Treasury, Post Office Box 1918, Memphis, TN, 38101, or it may be hand carried to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Memphis, TN.

For 1976 the form differed only in that it specified a mailing and forwarding address in Detroit, Michigan. C.A.S.A. 5-8.

[8] Petitioner cites only *United States* v. *Greene*, 862 F.2d 1512 (11th Cir.), *cert. denied*, 493 U.S. 809 (1989) for the proposition that the Fourth Circuit's rule is "opposite in application to other decisions of other Circuits." Pet. 25. In fact, *Greene* applied precisely the continuing offense stat-

Petitioner's accountant had offices in Maryland and his 1985 and 1986 income tax returns were prepared there, and petitioner and his bookkeeper met with and corresponded with the accountant in Maryland. Maryland was thus the site of relevant events and of relevant evidence. Since petitioner lived in Virginia, prosecution in Maryland involved no personal hardship. Prosecution in Maryland thus comported with the Sixth Amendment's ends of avoiding unfairness and hardship and promoting evidence-gathering. See *United States* v. *Cores*, 356 U.S. 405, 407 (1958); *Travis* v. *United States*, 364 U.S. 631, 640 (1961) (Harlan, J., dissenting).[9]

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ute relied on by the Government, 18 U.S.C. 3237(a), to a set of facts that almost precisely parallel those here at issue—preparation of a fraudulent loan application in a district from which it was not mailed. The Eleventh Circuit held that venue was proper "where he completed the false application and where he communicated with [his tax shelter advisor]." 862 F.2d at 1516.

[9] Petitioner's suggestion that this prosecution was brought in Maryland because of forum-shopping by the Government, Pet. 28, is groundless, as the court of appeals noted, Pet. App. 10a n.3.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfuly submitted.

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